SUPREME COURT, U. S.
SEP 10 1963

IN THE

Supreme Court of the United States

October Term, 1963.

No. 339.

HENRIETTA O. MURDOCH,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Reply Brief for Petitioner

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REPLY BRIEF FOR PETITIONER.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

1. It is not true that petitioner "recognizes there is no conflict" (Resp. p. 7).

Petitioner asserts that the case conflicts with **all** the decided cases, and that by it "well settled law" has become unsettled.

We have *no* complaint against the **facts as found** by the Tax Court and the Court of Appeals. The prayers of her complaint for an *accounting*—for financial information—were **found as a fact verbatim** by the Tax Court and the Court of Appeals.

The Tax Court *found as a fact* that the *sole* and *only gravamen* of her complaint was (6a):

> "Plaintiff's husband died in September, 1945 and thereafter the defendant, by means of false representations as to the value of the shares of the John P. Murdoch Company, received by her by the Will of her husband, fraudulently induced the plaintiff to exchange all of her shares in the John P. Murdoch Company for 49% of the shares of the 3630 Harverford Avenue Corporation which was then formed by the defendant for the purpose of defrauding the plaintiff of her rights in the John P. Murdoch Company."

> "The allegations and evidence as to the amount of profits were necessary in order to establish the value

* * * * *

* * * **'the determining factor is the nature of the basic claim** * * *" *Raytheon Production Corp. v. Comm.* (C. A. 1), 144 F. 2d 110, 113.

The "basic" and only claim is the gravamen. The prayers are for information. Perhaps her prayers were not adroitly phrased by her lawyers, but the gravamen remains. It is her basic claim. It is her only claim.

2. The examining revenue agent was right.

With all due respect for the hierarchy of the Internal Revenue Service and the Tax Division of the Department of Justice, the daily application of the law and the decisions to the raw facts is done by the Internal Revenue Agents. Here is the genesis of practically all tax cases, including the case at bar.

To the facts of this case, *consisting of the complaint and the settlement instruments*, the Agent denied the deduction of $16,500 of the $36,500 settlement to John P. Murdoch, Jr.; and this arrived in the Tax Court as Docket No. *89,551* (12a).

Later, as a protective measure, perhaps feeling that the element of predictability is ever uncertain in the law, a statutory notice was issued to Henrietta O. Murdoch, which became Tax Court Docket No. *92,922*.

The findings of fact of the Tax Court are the same as those of the Revenue Agent. It goes wrong when in its "*Opinion*" it writes about "profits to which she, *somehow or other*, claimed to be entitled." The respondent's Brief in Opposition cynically omits the critical and uncertain words **"somehow or other"** (Resp. p. 7).

She was **not** entitled to, and did **not** claim, *any profits from John P. Murdoch*. And there is **no finding of fact** that she **did** claim any profits from John P. Murdoch.

The decision in this case, being contrary to all the decided cases, is confusing to taxpayers and Revenue Agents throughout the land. Costly to the government, too.

Respectfully submitted,

HENRY D. O'CONNOR,
Attorney for Petitioner